

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 26, 2015 appellant, then a 48-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that on February 24, 2015 he sustained a right knee condition when the vehicle he was driving was struck from behind, causing him to hit his knee on the steering column. He stopped work on April 9, 2015 and returned on April 27, 2015. By decision dated April 22, 2015, OWCP accepted the claim for right collateral ligament knee sprain.

Following the accepted employment incident, appellant sought treatment with Dr. Geoffrey Glidden, a Board-certified orthopedic surgeon. In a March 19, 2016 medical report, Dr. Glidden reported that appellant complained of transient pain in his right knee, made worse with prolonged sitting or standing. He provided findings on physical examination and diagnosed right knee sprain/strain and prepatellar contusion. Dr. Glidden reported that appellant had returned to work without restrictions for approximately six months and competently performed his job duties without difficulty. He noted that appellant wished to be discharged from medical treatment. Dr. Glidden found this to be appropriate and informed appellant to follow up when necessary.

On April 1, 2016 appellant filed a claim for a schedule award (Form CA-7).

By letter dated April 20, 2016, OWCP requested that appellant submit a report from his attending physician addressing his work-related condition, the date of maximum medical improvement (MMI), objective findings, subjective complaints, and an impairment rating rendered according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*).² Appellant was advised that, if his physician was unable or unwilling to provide the required report, he should advise OWCP in writing. He was afforded 30 days to provide the requested information. Appellant did not respond.

By decision dated September 26, 2016, OWCP denied appellant's claim for a schedule award as the evidence was insufficient to establish any permanent impairment to a scheduled member or function of the body.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of scheduled members or functions of the body.³ However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to

² A.M.A., *Guides* (2009).

³ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴

It is the claimant's burden to establish that he has sustained a permanent impairment of the scheduled member or function as a result of any employment injury.⁵ OWCP procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of MMI), describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.⁶

The A.M.A., *Guides* provide a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF). For lower extremity impairments, the evaluator identifies the impairment Class of Diagnosis (CDX) condition, which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).⁷ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁸ Evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.⁹

ANALYSIS

OWCP accepted appellant's claim for right collateral ligament knee sprain. On April 1, 2016 appellant filed a claim for a schedule award. By decision dated September 26, 2016, OWCP denied his schedule award claim finding that he had failed to submit an impairment evaluation to establish a permanent impairment resulting from his work injury.

The Board finds that appellant has failed to submit evidence of permanent impairment to a scheduled member warranting a schedule award. By letter dated April 20, 2016, OWCP informed him of the type of evidence necessary to establish his schedule award claim and specifically requested that he submit an impairment evaluation from his attending physician in accordance with the sixth edition of the A.M.A., *Guides*. It afforded 30 days.

Appellant did not respond to OWCP's development letter. The only recent medical report of record was Dr. Glidden's March 19, 2016 report which noted complaints of continued

⁴ K.H., Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. B.M., Docket No. 09-2231 (issued May 14, 2010).

⁵ Tammy L. Meehan, 53 ECAB 229 (2001).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (February 2013).

⁷ *Supra* note 2 at 493-531.

⁸ *Id.* at 521.

⁹ R.V., Docket No. 10-1827 (issued April 1, 2011).

knee pain and discharged appellant from medical treatment. The Board finds that Dr. Glidden's report is insufficient to establish any permanent impairment. OWCP procedures provide that MMI must be reached before a schedule award can be made.¹⁰ Dr. Glidden failed to address whether MMI had been reached and provided no impairment rating for the right lower extremity.¹¹ His report is therefore insufficient to establish permanent impairment of his right knee.

It is appellant's burden of proof to establish a permanent impairment of a scheduled member.¹² The medical evidence must include a description of any physical impairment in sufficient detail so that the claims examiner and others reviewing the file would be able to clearly visualize the impairment with its resulting restrictions and limitations.¹³ Appellant did not submit such evidence and thus, OWCP properly denied his schedule award claim.¹⁴

On appeal, appellant argues that his right knee injury entitles him to a schedule award, but his physician failed to provide him an MMI date or an impairment rating.¹⁵

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish entitlement to a schedule award for permanent impairment.

¹⁰ *Supra* note 6 at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(1) (January 2010).

¹¹ *E.D.*, Docket No. 10-967 (issued January 7, 2011).

¹² *Supra* note 5.

¹³ *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

¹⁴ *V.W.*, Docket No. 09-2026 (issued February 16, 2010); *L.F.*, Docket No. 10-343 (issued November 29, 2010).

¹⁵ On appeal, appellant requested an evaluation from a Department of Labor physician. Any requests pertaining to his treatment should be made in writing to OWCP.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated September 26, 2016 is affirmed.

Issued: April 13, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board